The Facebook, Inc. v. Connectu, LLC et al
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EXHIBIT 21

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

Certified Copy

FACEBOOK, INC., and MARK ZUCKERBERG,

Plaintiffs

vs. Docket No. 5:07-CV-01389

CONNECTU, INC. (formerly known as CONNECTU, LLC), et al.,

Defendants

VIDEOTAPED 30(b)(6) DEPOSITION OF DAVID TUFTS

In Re: IMARC LLC

Friday, October 5, 2007, 9:20 a.m.

Proskauer Rose LLP

One International Place

Boston, Massachusetts 02110

-------Reporter: ALAN H. BROCK, RDR, CRR-------

FARMER ARSENAULT BROCK LLC, for:

LiveNote World Service, 221 Main Street, Suite 1250

San Francisco, California 94105

Phone: 415.321.2300 Fax: 415.321.2301

October 5, 2007 9:20 a.m.

P R O C E E D I N G S

THE VIDEOGRAPHER: Here begins the 30(b)(6) deposition of David Tufts, Tape 1, Volume 1, in the matter of Facebook, Inc., et al. versus ConnectU, et al. in the United States District Court, Northern District of California, San Jose Division, Case No. 5:07-CV-01389-RS. Today's date is October 5th, and the time on the video monitor is 9:21. The video operator today is Rosa Fox-Ogg, representing LiveNote World Service, located at 221 Main Street, San Francisco, California 94105, phone number 415-321-2300. The court reporter is Alan H. Brock, of the firm Farmer Arsenault Brock, on behalf of LiveNote World Service. Today's deposition is being taken on behalf of the plaintiffs and is taking place at One International Place, Boston, Massachusetts.

Counsel, please introduce yourselves and state whom you represent.

MR. CHATTERJEE: This is Neel Chatterjee and Theresa Sutton, representing Facebook, Inc., and Mark Zuckerberg.

MR. HAMPTON: My name is Dan Hampton. I don't represent a party in the California case, but

I represent defendant Eduardo Saverin in a case sharing many of the same parties now pending in the District of Massachusetts.

MS. SCHOENFELD: This is Meredith Schoenfeld, from Finnegan Henderson Farabow Garrett & Dunner. I represent the plaintiffs in the same Massachusetts litigation, ConnectU.

MR. SCHULTZ: Chris Schultz, for the defendants.

MR. CHOW: Stephen Chow, for iMarc, Inc., and the witness today.

MR. CHATTERJEE: And just for sake of clarity, Ms. Sutton and I also represent all of the defendants except for Eduardo Saverin in the Massachusetts case that Ms. Schoenfeld and Mr. Hampton referred to.

DAVID TUFTS, duly sworn

EXAMINATION

BY MR. CHATTERJEE:

Q. Please state your name for the record.

A. David Tufts.

Q. Mr. Tufts, my name is Neel Chatterjee, and I'm an attorney for the plaintiffs in a lawsuit pending in California. I represent Facebook, Inc. and Mark Zuckerberg in that case.

Have you ever had your deposition taken before?

A. No.

Q. By the way, thank you for coming today. I'm going to go through some ground rules with you about the deposition before we get started, just to kind of make sure we're on the same page and you kind of know how the process works, because you haven't had your deposition taken before.

A. Uh-huh.

Q. The basic process of a deposition is pretty simple: I'll ask you questions, and I will expect that you will answer, absent your attorney saying something's protected by attorney-client privilege, in which case your lawyer will tell you what to do.

This is a videotaped deposition, and what that means is, your testimony here is basically the same as if it were in trial. And if it were in trial, we would have a judge sitting in the room, too, and there might be jurors and other people witnessing this testimony.

However, this is a slightly more informal procedure, but your testimony is exactly the same. Do you understand that?

A. Yes.

MR. CHATTERJEE: Let's mark this as Exhibit in this case 63.

(Exhibit 63 marked for identification.)

Q. Before I give Exhibit 63 to the witness, I'm going to ask one thing, Mr. Tufts: I'm going to try as best as possible to encourage you to look into that camera when you're answering questions. If it ends up being uncomfortable or strange because you're actually getting questions from me, I'm not going to push you a lot on this. The only reason I do that is because, if we choose to submit this to a judge or a jury, it creates a very strange effect when you're not looking into the camera, because they kind of see a witness who is looking someplace that they can't see where the witness is looking.

So I may ask you at times, "Can you look into the camera and answer the question," or something like that. But I don't want you focusing on that. It's more important that your testimony be truthful and accurate.

One other question before we get started on this: Are you under any medications or is there any reason why you could not testify truthfully and accurately today?

A. No.

Q. So let me hand you Exhibit 63. Mr. Tufts, do you recognize this document?

A. Yes.

Q. What do you understand this document to be?

A. Not a whole lot. It tells me that I'm supposed to be here at this time and that you're going to ask me questions.

Q. So you understand that you're testifying as a corporate designee for iMarc about the topics set forth in this deposition notice.

A. Yes.

Q. And what did you do to prepare for your deposition today? And I don't want you to talk about specific conversations with your lawyers. Just generally, could you describe what you did to prepare for your deposition today.

A. We talked about -- I believe there's a bullet list on the last page of this, and we just kind of talked about those items.

Q. How long did you spend preparing?

A. A morning.

Q. Would you say that was two hours, three hours?

A. Two to three hours.

Q. Anything else you did to prepare for the

deposition today?
A. I looked through some of the emails that you guys have like a whole -- our archive of emails, and I looked through some of them just to refresh my mind.
Q. Did you have any conversations with people at iMarc or that have left iMarc about the topics?
A. Not about the topics, just mostly about the sort of like hassle of it.
Q. The fact that you're being deposed.
A. Yes.
Q. And were you involved at all in the collection and production of documents from iMarc?
A. Yes. I printed out my emails.
Q. Did you do anything else?
A. For this trial? To produce documents in response to a subpoena. I think a number of months ago we were -- our emails or documents were subpoenaed. I'm not sure if that's the right term. And I printed out all the emails that I had and gave them to Nils, who I work with, and he emailed them to wherever we were supposed to email them.
Q. Could you give me Nils' last name?
A. Nils Menten.
Q. Could you spell that, please?

A. N-i-l-s M-e-n-t-e-n.

Q. And was Mr. Menten the person that was coordinating the document production related to that subpoena?

A. Yes. Our first subpoena, or all these subpoenas have come to iMarc. He is the founder, the president, so he sort of took charge of the first one. I was a little more familiar with this matter, so after he sent in emails, it kind of fell in my court.

Q. I'm going to ask you to speak up just a little bit, to make sure that the court reporter can get the transcript down and the mike picks you up.

A. Okay.

Q. Could you describe what your educational background is.

A. I finished -- I went to high school and then college.

Q. Where did you go to college?

A. Northeastern University.

Q. And what kind of degree did you get?

A. Bachelor of arts.

Q. And in what subject matter?

A. Graphic design.

Q. Other than a bachelor of arts in graphic design, do you have any special training or certifications?

A. No.

Q. And where do you currently work?

A. IMarc.

Q. And what is your job at iMarc?

A. I'm one of the partners.

Q. Could you generally describe on a day-to-day basis what you do?

A. Mostly on a day-to-day basis I do project management. We make websites, Web applications; and my job right now is interfacing between clients and our production team and finding out what clients want and making sure our production team does it.

Q. How long have you been with iMarc?

A. Since nine -- since November of 1999.

Q. Did you join iMarc straight out of college?

A. No.

Q. Where did you work before that?

A. A company called Unison.

Q. Could you spell that, please.

A. U-n-i-s-o-n.

Q. What did Unison do?

A. They printed large-scale graphics, banner advertisements, for the FleetCenter, places like

that the Web servers were running.
Q. You were the IT guy.
A. Yes. But at that point there were -- iMarc was three people, or two people, so everyone was every guy.
Q. Did your job responsibilities ever change from being a computer programmer and server administrator?
A. Yes.
Q. And how did your jobs change?
A. As iMarc grew, probably by 2002 -- or I just became more involved -- between 2000 and 2002 I became more involved with the programming. And then around 2002-2003 I became -- or no, even after that. I guess it would have been -- I'm not sure; maybe 2004-2005, even, I became a project manager. I did more of that stuff, because we had more employees, and there needed to be sort of another layer of project management.
Q. And project manager is the person who interfaces between the clients and the production?
A. Yes.
Q. At what point did you become a partner in iMarc?
A. 2000, early 2000, late 19- -- yeah, early

2000, I think, or late 1999; right around there.

Q. How big is iMarc today?

A. Seventeen people.

Q. How many clients does iMarc have, approximately?

A. 150.

Q. I'm going to go through a list of names, just to understand who they are, because we've seen a lot of different names in the various email traffic and things, and I just want to get a sense of who they are and what they did.

Bill Boo-shee?

A. Bushee.

Q. Who is Bill Bushee?

A. He is a programmer at iMarc, a Web developer.

Q. What is a Web developer?

A. He writes the code that powers the websites.

Q. Do you know how long he's been with iMarc?

A. I believe he joined iMarc around 2000.

Q. And Nick Grant?

A. Nick Grant was the first project manager. He joined iMarc January of 2000, as a project manager. As iMarc grew, we split, and we needed two project managers. But Nick has always been a project manager at iMarc. He is also a partner in the company.

Q. Is he still with iMarc?
A. Yes.
Q. And is Bill Bushee still with the company?
A. Yes.
Q. Fred LeBlanc?
A. He's also a Web developer, programmer.
Q. Is he still with the company?
A. Yes.
Q. Marc Pierrat?
A. He was a salesperson in new business development.
Q. You said "was." Is he no longer with the company?
A. That is correct.
Q. When did he leave the company?
A. Three years ago, two to three years ago.
Q. Was his leaving the company voluntary?
A. Yes.
Q. How long did he work at iMarc?
A. About two years.
Q. I'm going to go through these names again and I'm going to ask if you know what their email

addresses were at iMarc. Mr. Bushee, do you know what his email address was?

A. B-i-l-l@imarc.net.

Q. And Nick Grant?

A. Nick@imarc.net.

Q. Fred LeBlanc?

A. Fred@imarc.net.

Q. And Marc Pierrat?

A. Marc, M-a-r-c, @imarc.net.

Q. So emails with those email headers would be emails that originated from the people that you identified?

A. If the header was the "from" address.

MR. SCHULTZ: Sorry. Objection, calls for speculation.

Q. So if it said bill@imarc.net, it would be an email that came -- if it said from Bill at imarc.net, it would be an email from Bill Bushee.

MR. SCHULTZ: Same objection.

A. This is what I don't understand: Should I still answer the question?

Q. Yes.

A. Yes.

Q. As I said, when he lodges an objection or anybody lodges an objection, as long as the question

is clear to you, you can go ahead and answer it.
A. All right.
Q. Is there a general practice at iMarc for people to use each others' email addresses?
A. I don't understand that question.
Q. So, for example, would Mr. LeBlanc generally be allowed to use Mr. Bushee's email address?
MR. SCHULTZ: Objection, vague.
A. I don't know of any case where that's happened.
Q. Now I'm going to turn to a different topic. I want to talk to you about ConnectU, Cameron and Tyler Winklevoss, and Divya Narendra. Do you recall --
Well, let me start with this: Have you ever met, either electronically, through an email or the like, or live, Divya, Cameron Winklevoss, or Tyler Winklevoss?
MR. SCHULTZ: Object to the form.
A. Yes.
Q. When was the first time that you met any one of those people?
MR. SCHULTZ: Object to the form.
A. This is including electronically, you said?

Q. Yes.
A. Whenever the first email is.
Q. Can you give me an estimate as to time?
A. 2003.
Q. Do you recall the first time you met them via a telephone call or in person?
MR. SCHULTZ: Object to the form.
A. I don't recall the first time. I'm guessing it was probably after that.
Q. And do you recall who it was that contacted iMarc?
MR. SCHULTZ: Objection, foundation.
A. I believe one of the Winklevosses.
Q. One of the Winklevoss brothers?
A. Yes.
Q. Do you recall why they said they were contacting iMarc?
MR. SCHULTZ: Objection, foundation. Assumes facts not in evidence.
A. I was not part of the original. That would be typical of a client. Specifically, in this case, the client contacts our sales department. That would have been Marc -- to talk about a probable job. And then after it was ironed out, it would go to me or the production team. So I don't recall who

contacted us first and why, but I'm guessing it's all in those emails.

Q. And when you said you were contacted -- iMarc was contacted about a possible job, what did you understand the job ultimately to be?

A. By the time Marc presented it to me, I believed it to be a social networking site.

Q. What do you mean by "social networking site"?

A. A website where people can create profiles about themselves to interact with or network with other people on the website, either for personal dating reasons or professional reasons.

Q. Please explain a little bit more what you mean by that.

MR. SCHULTZ: Objection, vague.

A. I'm not sure. Can you ask me a specific question?

Q. Sure. You described the scope of the project being a social networking website. Did I get that right?

A. Yes.

Q. And you said that it was a website where people can create profiles to interact with others for dating or professional reasons.

A. Correct.

Q. Maybe I can probe a little bit more into what you mean by "dating and professional reasons."

Let me ask the question, first: What did you mean when you said "for dating reasons"?

A. I believe that they wanted to allow their users to create profiles so they could meet, connect with other people for personal reasons -- friendship, dating. The website was really just about bringing people together, and from then on, it's not going to impose any rules about dating or something like that. It's mostly about just meeting.

Q. That was the scope of the project they presented.

A. Yes.

Q. And what about professional reasons? What do you mean when you said that?

A. Perhaps someone would create a profile much like a resume. Other people in a company could search through or look for specific people to hire, to work with, things like that -- professional business.

Q. And were you given any guidance when you were given the scope of this project about what to look at to develop this website?

A. Yes.

Q. And what guidance were you given?

A. By the time it came to me with a proposal, there was a number of benchmarking sites -- match.com, I believe, rise.com, thefacebook.com, friendster.com -- and then also some -- so those were all, especially friendster.com -- those were all social networking sites that were already out on the Internet that did something similar. And they also gave us a number of benchmarking sites for the visual look and feel. Most of those sites were really stripped down and technical. And they sent us, I believe, YSL, which might be a fashion company, a couple of sites that we had actually developed they liked the look at -- look of. So they gave us a couple other, maybe four sites -- again, it's in those emails -- of benchmarking sites which they liked the look of. So we had a couple of sites that they liked features from, a couple of sites that they liked the look of.

Q. You mentioned these benchmarking sites. Were you told to do anything specifically with respect to your review of the match.com website?

A. No. I think that they pointed out features that they liked. Again, this is just from me recently looking through these emails. I noticed that on match.com there was a feature where, I think you could wink at someone. If you had a profile and -- if I had a profile and you had a profile and I found you attractive, I could wink at you and send you a little email. They liked something like that, and I think we ended up implementing something similar to that. That was something from match.com that they found appealing.

Q. And what about rise.com? Do you remember anything specific that they identified that they wanted?

MS. SCHOENFELD: Objection, relevance.

A. I believe rise.com did a good job of presenting professional profiles, much like, you know, a resume, but online.

Q. Anything else?

MS. SCHOENFELD: Same objection.

A. No.

Q. What about thefacebook.com? What did they identify from that?

MS. SCHOENFELD: Same objection.

A. Some of the features that -- I think the Facebook had more of a mix of the professional and

MS. SCHOENFELD: Same objection.
A. No, they -- no. We didn't spend a lot of time talking about Mark Zuckerberg and their relationship.
Q. Are you aware of whether iMarc ever signed a nondisclosure agreement related to information that was shared by the ConnectU founders -- Divya Narendra, Tyler Winklevoss, and Cameron Winklevoss -- with iMarc?
MS. SCHOENFELD: Objection, relevance.
A. I'm not aware of any nondisclosure agreement.
Q. Are you aware of whether they shared with you any information which was to be held confidential by iMarc?
MS. SCHOENFELD: Objection, calls for speculation, relevance.
A. I'm not aware of anything other than some of the emails. There's that standard footer that says, "This is private," and that was a concern of mine, sending that to you guys. But that's about the only thing that I could think of.
Q. So as you sit here today, you're not aware of any confidentiality obligation between iMarc and the ConnectU founders or ConnectU, LLC?

MR. SCHULTZ: Objection, calls for speculation.

A. I personally am not aware of it.

Q. Would it generally be your practice to be aware of obligations like that in relationships with clients?

A. Not in my role during this time. My role is mostly programming. I don't remember -- again, the size of the company was a lot smaller. I'm not aware that we had any nondisclosure agreements at that time.

Q. Who owned the intellectual property associated with the development of the ConnectU website?

MS. SCHOENFELD: Objection.

MR. SCHULTZ: Objection. Foundation, calls for a legal conclusion.

A. I'm not sure.

Q. If we go back to Exhibit 65, in this third paragraph --

A. Yes.

Q. -- the second-to-last sentence says, "In fact, for some sections, like groups, our only instructions were, 'Go to Facebook, figure out what they are doing, add it to our site.'" What did you mean by that?

A. I meant by the time it seemed there was definitely this period of time that we were racing around to try add more features to compete with sites that were already out there that had traction. So they were going to lots of sites on the Web and figuring out, I mean, what features might interest people who create accounts on social networking sites. And I think that one specific one, the groups, was one of the ones that we added toward the end, where they were just like, "Hey, that's a cool feature. Let's do that" -- as opposed to the way we normally work, which is speccing out -- like working with a client, really like defining what the problem is, what the solution is. That's the way iMarc typically works.

Once connectu.com launched, there seemed to be much more of a quick, all of a sudden "We need to add lots of features, we need to get popular and get traction, and we think that that will happen by adding lots of features." So there was a lot less spec work -- which personally, again, this is my personal rant, and I assume that that bothered me, that I like to define problems, define solutions, as opposed to just being, "Hey, Facebook does this.

Cool, let's add something like that to our site."

Q. Did you ever access the Facebook website at the direction of the ConnectU founders?

A. I think -- yeah, I think we certainly -- I think we accessed a number -- I mean, we looked at -- by "access" I'm assuming you mean looking at, log in, look at a website. I think we did that to a number of social networking sites.

Q. And what did you do to access the Facebook website?

A. Looked at it.

Q. Well, let me make it a little simpler. Did you have an account with Facebook?

A. I think that they had an account, that they would show us stuff.

Q. Whose account was it?

A. Cameron's. I'm not sure. I don't know, actually. I shouldn't speculate.

Q. When you said "they would show us," describe what you mean by that.

A. I think they would -- you know, we'd have a -- they'd come up to our office, or they'd, you know, send us screen shots or email us, you know, pages and say, "Hey, look at this. This is kind of neat."

Q. So you wouldn't log in yourself. They would log in and show something to you from the Facebook website?

A. I'm sure that I had an account through my Northeastern email. I had an account on pretty much all the benchmarking sites.

Q. And when you looked at it with respect to the ConnectU project, were you doing it at the direction of the Winklevoss brothers and Divya Narendra?

A. I think if they mentioned something that they saw that they thought was a cool idea, I would probably check it out, too.

Q. And would you ever use their password accounts?

MS. SCHOENFELD: Objection, vague.

A. I don't know. I don't know. I think before I had an account, they had an account. I'm not sure if they logged in or we logged in. I think that they had an account before we did, though, because they went to Harvard.

Q. My question was simpler than that. Did you ever use their accounts to access Facebook, as opposed to your own account?

A. Oh. I don't know.

the Winklevoss brothers. Are we on the same page when I say "ConnectU founders"?

A. Yes.

Q. Did the ConnectU founders ever describe to you what arrangement they had with Mark Zuckerberg?

MS. SCHOENFELD: Objection, relevance, outside the scope of the deposition.

A. As far as I can recall, the ConnectU founders, in the loosest terms, may have said -- or said, "He was supposed to build a website, and he never finished it," something as vague as that -- like "He started building it and didn't finish it."

Q. Did they say anything else to you?

MR. SCHULTZ: Objection, outside the scope.

A. Yes, they said other stuff to us.

Q. With regard to that relationship?

MR. SCHULTZ: Objection, outside the scope of the deposition.

A. They complained about him a lot.

Q. When you say, "They complained about him a lot," describe what you mean.

MR. SCHULTZ: Same objection.

A. Anytime that the Facebook was in the news, they would, you know, be mad about it, or they'd --

they obviously just didn't like it. I don't know. We just ended up hearing a lot of complaining about him. I don't remember specifically exactly what was said.

Q. When you said that they said in the loosest terms that Mark Zuckerberg was supposed to develop a website, what do you mean when you say "in the loosest terms"?

A. I mean, I can't remember exactly what they said. But again, we had talked about this before: Like a month into the project it was brought out that -- they started talking more about Mark Zuckerberg because thefacebook.com started getting more popular, and they obviously had some personal feelings, that they didn't like him. And they mentioned that "He was supposed to build this for us."

Again, there wasn't a whole lot of us, the production team, talking with ConnectU about Mark Zuckerberg. We were more concentrating -- we were concentrating on just getting a site up, and we know that they wanted to get a site up quickly, because this other site, the Facebook, was already getting traction.

Q. Did they ever tell you that they had a contract with Mark Zuckerberg?

MR. SCHULTZ: Objection, outside the scope of the deposition.

A. Not that I remember.

Q. Did they ever tell you that Mark Zuckerberg was a partner in their project?

MR. SCHULTZ: Same objection.

A. Not that I remember.

Q. Do you remember at any point in time any of the ConnectU founders telling you to keep information confidential that they were sharing?

MR. SCHULTZ: Objection, outside the scope of the 30(b)(6) topics.

A. I don't remember that, no.

Q. We'll go through a few more names, not iMarc names.

Are you familiar with someone by the name of David Gucwa?

A. Again, I'll probably -- if I saw his name printed -- the pronunciation doesn't sound familiar. If I saw it printed -- a lot of these people are just email addresses to me, so if you showed me his name printed --

Q. He's not actually in any emails that I recall. I just wondered if you'd heard the name.

A. No.
Q. It's G-u-c-w-a.
A. I don't know.
Q. What about John Taves, T-a-v-e-s?
A. Yes, I believe that he was sort of the new webmaster, maybe. He was technically in charge of the site after we -- he took over after we were done.
Q. Have you ever had conversations with Mr. Taves?
A. Yep.
Q. And when do you remember having your first conversation with him?
A. I'm not sure of the exact -- maybe late 2004, or summer 2004. When we were -- we -- iMarc moved ConnectU off of our servers, onto their own server, he seemed to be the one who was going to take over, technically take over. So there was a couple of conference calls, talking about where files were, where stuff was.
Q. Why was ConnectU being taken off of your servers?
A. We just weren't happy with stuff they were asking us to do, and we just weren't happy with our relationship with them.

Q. Describe what you mean by that.

A. They asked us to do a couple of things that we deemed unethical, and they actually seemed to do something -- seemed to send out emails that we saw, and we didn't want that happening on a server that we managed.

Q. Anything else?

A. Just in general we just weren't happy working with them any more.

Q. Other than the email issue, when you say you generally weren't happy, what was prompting those feelings?

A. I think I touched on in that personal rant, where they were just telling us to "Do this, add this, add this," and that's not really how we work and like to work. We were growing and had enough other clients that we just really didn't want to work that way with them. Compound that with a couple of unethical things that they seemed to be doing, we just didn't want any part of managing their server or working with them any more.

Q. Were you concerned at all for iMarc's liability associated with some of those activities?

A. Oh, yeah, sure, yep.

Q. Describe what you mean by that.

A. If it's a server that we manage that might have other clients on it and someone sends out mass emails from it and the server gets blacklisted -- which would mean that it's known to send spam, so email clients won't accept mail from that -- if they're sending spam, it gets the whole server blacklisted, and we have other clients that suddenly their email stops working. So we didn't want to deal with that. That's not what we do.

Q. You used the term "spam." What do you mean by that?

A. Sending out email without someone signing up for it or requesting it.

Q. Did you ever tell the Winklevoss brothers or Divya Narendra that you didn't -- that you found these emails unethical?

A. Yes.

Q. Tell me when you first discussed that issue with any of them.

A. It's in one of the emails. It's referenced in the bullet list in the back of the thing, where they sent out a number of emails, 6:00 a.m. by 9:00 a.m. we saw, what are they doing, and we disabled the ability to do that and talked with them about it.

Q. I'll ask a little bit more about that a little bit later today.
I want to go back to John Taves. So after migrating the ConnectU website from the iMarc servers to John Taves --
Does he have a business?
A. I think originally -- so iMarc hosted a number of websites on shared servers. So we buy one single piece of hardware and can fit, you know, 40 to 50 websites on it. Step No. 1, when we saw that, you know -- when we started to question their ethics, we told them, "You guys get your own server. You sign up for it, and we'll help you move stuff there." I don't know if John Taves had anything to do with that, if he actually owned the server or whatnot. So it's not saying it's John Taves' server. It's a server that ConnectU set up. They gave us the log-in information to move everything to. So I think that was before there was any talk of John Taves.
Q. And so what was the first circumstance you remember having an interaction with John Taves?
A. I think he wanted to add a feature to the website, and he was obviously taking over the webmastering stuff. We were not as responsive with

Q. Are you familiar with something called Importer?

A. No.

MR. CHATTERJEE: Let's mark this as Exhibit 73.

(Exhibit 73 marked for identification.)

Q. After you're done looking at this, just let me know.

A. Okay.

Q. At the very end of this email it talks about, "We are starting to see an increased load right now from Social Butterfly and it isn't going to stop (only get worse)." Do you have any understanding as to what Mr. Wink was talking about there?

A. No.

Q. Does this email refresh your recollection as to what your involvement with the website was on or about February 16th, 2005?

A. Yes, and it was little to none. I'm telling them, Cameron and cc'ing someone at pnwsoft, like where some files are and what they're doing. But at this point we were not involved -- I don't think we were doing work on the website at this point.

Q. Do you have any understanding of why Mr. Winklevoss sent you this email?
A. He wants to know what I -- he seems to think that the website is slow, and he wants to know if I have any ideas to make it faster. And do I seem to be suggesting the Social Butterfly connect to Wayne's servers? I seem to be suggesting that he should move it off his own server onto one of Wayne's servers. And then I tell Cameron and mrprimate@pnwsoft.com what these scripts are doing.
Q. What is a script?
A. A file that performs some sort of functionality.
Q. And what -- when you say "these scripts are doing," what scripts were those?
A. I think these scripts kept track of who was on line at any given time. So if you went to the home page, you could see a list of users who were actually on line. And one of them seems to -- every couple of minutes it performs some cleanup to delete people from the list.
Q. Are you familiar with something called Hurricane Electric?
A. No.
Q. You said earlier that there was -- that

you -- that your company originally hosted the ConnectU website.

A. Yes.

Q. What information would be stored on your servers when you were hosting the ConnectU website that was associated with ConnectU?

MS. SCHOENFELD: Objection, vague.

A. Tons of information, information about almost anything -- I mean, information about what the server is doing, what software is installed on the server. I think that there was probably 40 to 50 other iMarc clients hosted on the server as well, information -- you know, everything that you could see by going to any one of those websites.

Q. I was actually just focused on with respect to the ConnectU website.

A. You asked me what was on the server.

Q. Right, with respect to the ConnectU website, if that wasn't clear. I'm sorry about that.

So the question is: With respect to, you know, the ConnectU website, what information related to ConnectU would be stored on that server?

A. Every single file that powered the ConnectU website would be on that server.

Q. And would all the activity that occurred through the ConnectU website be stored in some way?

MR. SCHULTZ: Objection, vague and overbroad.

A. What sort of activity?

Q. Such as instant messages that were sent.

A. Yes, there was -- yes. I mean, the database, yes, keeps track of all that information.

Q. Now, when you transferred the server -- when you transferred the website to another company --

A. Uh-huh.

Q. -- would any of the information that was stored on your server related to the ConnectU website be lost?

A. If all went well, no. The idea would be to completely transition everything off.

Q. And everything related to ConnectU would be transferred off?

A. Yeah. So if the site looked a specific way and had a set of information on our server and we moved it to their server, it should continue looking and acting and storing all the same information in their server.

Q. And it would have all the historical

information as well?

MR. SCHULTZ: Objection, vague.

A. Yes.

MR. CHATTERJEE: Let's mark this as Exhibit 74.

(Exhibit 74 marked for identification.)

Q. After you're done looking at it, let me know.

A. Yes.

Q. Do you recognize this email marked as Exhibit 74, Mr. Tufts?

A. Yes.

Q. And what is this email?

A. This is an email from me asking for -- asking Cameron to confirm that we're terminating all his services and all his billing.

Q. And it says that there would be a recurring bill for connectu.com email and DNS. Do you see that?

A. Yes. I believe that Nils mentioned $50 for these email and DNS services.

Q. And what were those services?

A. Email and DNS services.

Q. Describe what those are.

A. DNS, we have a name server where, when you type "ConnectU" into your browser, the DNS server -- your computer doesn't go directly to ConnectU. It first needs to know where ConnectU is. So type "ConnectU" into your Web browser. Your Web browser looks up, finds out where the DNS is hosted. Your Web browser goes to the DNS server. The DNS server says, "ConnectU is on this server," and your Web browser goes to that server.

Q. What about the email?

A. Email is email hosting, a POP email account.

Q. So that's where all the emails for ConnectU would be stored?

A. That's where they would come in to. But like how I described iMarc's. It's a POP email server. It's not like Exchange, where it keeps everything on the server.

Q. It's more of a delivery vehicle than something that stores email.

A. Correct.

Q. So it's essentially a vehicle to direct emails to a particular location?

A. Correct.

MR. CHATTERJEE: Let's mark this as Exhibit 75.

(Exhibit 75 marked for identification.)

Q. After you're done looking at it, let me know.

A. I'm done.

Q. Do you recognize what's been marked as Exhibit 75?

A. Yes.

Q. And what is that?

A. This is an email from myself with a previous thread between me, Nils Menten, Cameron Winklevoss, and Nick Grant.

Q. And in the middle of this email is the remark, "I deleted all ConnectU email accounts from our servers." Was that from a statement you made or someone made to you?

A. I believe that was something I made.

Q. And what did you mean when you wrote that?

A. Well, so, Cameron had sent me an email saying -- so this is a week after this other one. Basically the other one says, "We're turning off the Web server. Do you want to leave email and DNS on?" And Cameron says, "I'll let you know when we decide to change email or DNS." So I'm guessing a week, week and a half later he decided to turn those off.

So if I don't actually remove the DNS

and email accounts from my own server, when I send email to anything at ConnectU, it will go to my server, it will bypass the real route to the new one. So the only way to avoid having a lame DNS or lame email record, you need to completely remove those. So now when I type in "ConnectU," it goes to the real DNS and finds its way to the real address, instead of stopping at my own server.

Q. So what exactly did you delete when you said you deleted all ConnectU email accounts?

A. Just the pointer to the account. Like you said, it's a delivery system. So it was -- at this point it was not doing anything. It would only be basically messing up or intercepting my iMarc email to ConnectU. So removing that sort of like pointer, as you called it, a delivery method, it finds its way to the real one. And the same thing with DNS.

Q. Earlier today -- I'm going to move now to the topics of data that may have been obtained from the Facebook website and the sending of email messages to people based upon information obtained from Facebook.

You mentioned earlier today that there were several or a number -- I don't remember the exact word that you used -- of unethical actions that you felt were taken by ConnectU. Could you please list what those actions were.

A. The two primary ones are what's listed in this document. Those are something about like screen-scraping Facebook, asking us if we would do that, and something about sending out a whole bunch of unsolicited emails.

Q. Anything else? Okay, sorry.

A. So June and July of 2004. And right after that is when we took their Web hosting off of our Web server. They set it up on their own server. And then in that other email we were suggesting, "Instead of you managing on your own server, move to Wayne" whatever.

But yeah, that is what, June 11 and July 6, those two instances are what promoted us not wanting to host their website or really do anything.

Q. Is there anything else that you recall, other than those two instances?

A. No.

Q. Are you aware of whether any additional -- after the website was moved to another hosting provider, are you aware of whether there was any further efforts to obtain email addresses from Facebook?

A. I don't know. At that point we kind of washed our hands of it. I didn't know, nor did I care.

Q. And are you aware of whether after the hosting ended whether any further sending of unsolicited emails occurred?

A. I don't know.

MR. CHATTERJEE: Let's mark this as Exhibit 76.

(Exhibit 76 marked for identification.)

Q. After you're done looking at this, let me know.

A. Uh-huh. Yep.

Q. Do you know someone named Marc M. Pierrat, P-i-e-r-r-a-t?

A. Yes.

Q. Who is that?

A. He's the person we discussed at the beginning of this meeting. He was the salesperson for iMarc at the time.

Q. Are you familiar with any discussions between anyone at iMarc and any of the ConnectU founders about creating something called a parser?

A. No.

Q. And do you have any reason to believe that

this email is inaccurate?
A. No.
Q. Is this something that iMarc would have done?
A. No, and we didn't do it.
Q. And why wouldn't iMarc have done it?
A. Well, it actually --
I think it's just -- it would be easier to have the user fill out a new profile on a new website.
Q. What do you understand this email to be asking Marc to do?
A. I'm not cc'd here. This is my first time seeing this. But to me it looks like --
MR. SCHULTZ: Objection. Calls for speculation.
A. It looks like Cameron is asking Marc, saying, you know, people who are on the Facebook, if they want to make a ConnectU account, we want to make this easy for them to move over, so what if they have like a page on ConnectU where they type in their log-in information and it imports their Facebook profile over to ConnectU?
Q. And you said this isn't something iMarc would have done. Why not?

A. I mean, I don't know. Maybe we would have. If you -- there's lots of sites that actually do this. I actually don't see this -- I don't see anything unethical about this, where if the user types in their own log-in and password and then the website uses what the user typed in to try and retrieve that same user's information --

So maybe we would have. But --

Q. But you didn't.

A. We didn't. I would say we didn't in this case, because it doesn't -- technologywise, it's easier just to make them fill out a new profile.

MR. CHATTERJEE: Let's mark this as Exhibit 77.

(Exhibit 77 marked for identification.)

A. Yep.

Q. Do you recognize this document?

A. Yes.

Q. And what is this document?

A. This is ConnectU founders -- I assume it's the ConnectU founders; "the boys from ConnectU" -- asked Marc how long it would take to write a script that can actually go and screen-scrape the information from the Facebook.

Q. What do you mean "screen-scrape"?

A. Whereas the other one the user is actually putting in their information and saying, "Go get my information," this one is just us saying we're going to just keep randomly keep going through Facebook pages and get information without any user's knowledge of it.

Q. Were there any discussions internally at iMarc about the request made by the ConnectU founders to create a program to extract email addresses from Facebook?

A. Yes, there's three or four follow-up emails to this.

Q. Were there any live discussions?

A. Probably. They probably just echoed what was in the follow-ups, the emails.

Q. Describe for me generally what was the feeling about writing the sort of a program that would take email addresses from Facebook.

MR. SCHULTZ: Objection, vague and overbroad.

A. I can actually read the emails, if you want.

Q. We'll get to that. I'm just trying to get a general sense.

MR. SCHULTZ: Same objection.

A. We didn't want to do it. We didn't think it was ethical.

MR. CHATTERJEE: Let's mark this as 78.

(Exhibit 78 marked for identification.)

Q. Before I ask about this, I want to ask you: Why didn't you want to do it?

A. It just doesn't -- it doesn't feel right. I mean, we're going to go harvest people's email addresses who don't know it. Would you do it?

Q. Well, fortunately, I get to ask the questions today.

A. It doesn't feel like a good thing to do.

Q. I guess I want to probe a little bit into that. Like why doesn't it feel like a good thing to do?

A. It feels like -- I.

I mean, right here, what it says, "It seems sketchy. I wonder if we should have a Web ethics committee." We're kind of joking about it. "It just seems completely unethical."

Q. And what about it seems unethical? Let me ask you that question first.

A. Everything about it.

Q. Did it feel like stealing?

A. I mean, we didn't do it. It just doesn't seem ethical to us. I mean, you know what "ethical" means, and it doesn't seem ethical.

Q. You drew a distinction between if you were using someone's password to go and take profile information.

A. Yes.

Q. Versus what this was.

A. Yes.

Q. Why was that distinction important to you?

A. Well, because a number of websites actually do this. You sign up for an iPhone account, and it will move your entire account information over from Sprint or whatever over to Cingular. A number of Web applications do that, because you actually say, "Here's my information to this website. You go get it." So that, to me, seems okay and it seems like it's okay to a number of other companies, because a number of other companies are doing stuff like that.

Whereas this -- let's say we go to profile ID number. Whoever owns that profile never came to ConnectU and said, "Here's my information, here's my page, and go get the information." So that's the distinction.

Q. So the distinction, if I'm understanding you correctly, is whether the user has given

permission for that information or not.
A. Whether the user has requested to actually do that. The other one actually seems like here's a way where you can go move all your information over. You go and fill in submit. So when you hit submit, you're actually making a request to the Web server. So one the user is requesting, "Hey, please do this for me." In this one the user isn't requesting that, the user doesn't know about it. To me, it seems like night and day.
Q. Do you ever have conversations with the ConnectU founders about why it was you were not willing to write this script that they requested?
A. I don't know if we had any deep "You guys shouldn't do this" preaching conversations. But we turned it down. We said, "No, we don't want to do that. We don't think it's ethical," probably.
Q. Do you know if iMarc told them that they didn't think it's ethical?
A. I'm imagining we did. I mean, Marc turns it down in one of the other emails, and I don't know if -- they probably had some conversation off line after that.
Q. And do you know if that kind of a script was ever written by anyone on behalf of the

Winklevoss brothers or Divya Narendra?
A. There's another email of some guy asking me advice on how to write the script, and I ignore him, I don't write back to him. I didn't do anything. So I don't know if it actually ever got done. That was after they moved on from iMarc.
MR. CHATTERJEE: If we could mark this as Exhibit 79.
(Exhibit 79 marked for identification.)
A. Yep.
Q. Do you recognize this email that's been marked as Exhibit No. 79?
A. Yes.
Q. And what is this exhibit?
A. This is me responding to Marc.
Q. And what were you responding to him about?
A. I imagine he pressed me on the issue of, you know, "Putting your moral issues aside, technically how long would it take?" And I give him a technical answer.
Q. And when you say "putting the moral issues aside," with respect to what?
A. It says "moral/legal issues aside." So obviously it's already been determined that it's unethical and we don't want to do it, but it can be

done.

Q. And when you say "it," what is the "it" you're referring to?

A. Well, again, I'm assuming the subject and the dates, that it is in reference to this email, "Mining the Facebook."

Q. So this is in respect to the effort, the script that the ConnectU founders wanted to write to extract emails from the Facebook website.

A. Yes.

Q. Did you know whether it was even actually possible to extract emails from the Facebook website?

A. Of course. I say it can be done in 10 to 15 hours.

Q. How did you know that?

A. Well, because you can extract anything that you can see on the Web. So, you know, if you can see it on the Web, you can -- if you can read it, a computer script can read it. So, again, I think this is where Marc was just saying like, whatever moral issues aside, how long would it take? So I presumed it wouldn't be too difficult.

Q. Well, you understand that you can't see profiles on Facebook without first logging into the website?

A. So are you saying a computer script couldn't log into a website?

Q. Well, that was my question. Because you can't see it without doing some sort of actions, were you aware of a security hole or a password? How would you envision going in to extract those email addresses?

A. The same way that if -- I mean, the same way, if you hired someone to log into the website and copy and paste every single email. That would take someone a hundred hours to do, but a computer script could do that in a fraction of the time.

MR. CHATTERJEE: Let's mark this as Exhibit 80.

(Exhibit 80 marked for identification.)

A. Yep.

Q. Have you ever seen this email before?

A. No.

Q. And Marc Pierrat is an iMarc employee?

A. Yes.

Q. At the very end of the paragraph -- at the very end of the email the remark is made, "Actually, you can steal addresses from the Facebook. You can't from ConnectU. This is our big advantage, so

it is far more likely that someone mined Facebook for email addresses." Do you see that?
A. Yes.
Q. Do you have any understanding of why email addresses could not be stolen from ConnectU?
MR. SCHULTZ: Objection, calls for speculation.
A. I don't think we printed email addresses on the screen.
Q. So they weren't listed.
A. Correct.
MR. CHATTERJEE: Let's mark this as Exhibit 81.
(Exhibit 81 marked for identification.)
A. Yes.
Q. How did you first learn that the ConnectU founders were actually trying to write code to extract email addresses from the Facebook?
MR. SCHULTZ: Objection, foundation.
A. I don't know. I mean, in that first email, they asked us to do it.
Q. And after you said no, did you ever have occasion to learn that someone else may be doing it?
A. This email, sent from Deva Mishra, it looks like there's how you can do that.

Q. Let me spell that for the record: D-e-v-r-a M-i-s-h-r-a.
Have you ever met Deva Mishra before?
A. No.
Q. Do you see the code that's written in this paragraph?
A. Yes.
Q. And what do you understand that code to do?
A. It goes -- I mean, this is exactly what we just talked about -- how any person or computer script would do this. It goes to ConnectU. It codes --
Q. Do you mean the Facebook?
A. Sorry, the Facebook. It goes to Facebook. It posts someone's log-in.
Q. And is that drm25@cornell.edu?
A. That's an email that it sounds.... And then I'm guessing it actually reads what it sees on the screen. It doesn't look like this actually goes through and reads profiles. It looks like this person is just trying to read a single page and then quit.
Q. And what did you understand Mr. Mishra was asking you to do in this email?
A. I mean, I think it was pretty obvious that

from -- when was that other one? So on June 13 they ask us if we can do that and we turn them down.
Q. Do you mean May 13 or June 13?
A. I mean June 13.
Q. I'm sorry.
A. The ConnectU founders asked us to write a script like this and we turned them down. And then on July 6 Deva Mishra sent an email through the iMarc website -- he didn't get my personal email, but he went to -- I can tell by the subject line. He went to imarc.net, found my page -- there's like about us and it describes all the employees. He found my page and sent me an email through the website, and he sent this in the email. So I presume that he was -- ConnectU had found him and talked to him about doing it.
Q. And again, I'm sorry, to get hung up on prepositions. The "it," what do you mean by that?
A. About writing a script that logs into the Facebook.
Q. And does what?
A. Again, the original request was something that logs into the Facebook and grabs people's emails. This one seems like it's just logging into the Facebook. But, I mean, I think that any sane

person could presume what the next step is for this guy to do.

Q. And when he wrote in the second paragraph, "What I'm working on now is getting emails of thefacebook.com," what did you understand that to mean?

MR. SCHULTZ: Objection, calls for speculation.

A. I mean, I would speculate that it means that he is trying to get emails of users off of thefacebook.com. That's what I would speculate that means.

Q. And what's your basis for believing that's what he meant?

MR. CHOW: Objection.

A. I mean, just by reading this. That is my basis.

Q. Is that what you understood it to mean when you received the email?

A. Yes.

Q. Did you ever respond to this email?

A. No.

Q. Did you have any other conversations with the ConnectU founders or anyone on behalf of ConnectU with respect to this email?

A. I don't know. I actually looked up this guy in all my emails, sent emails, and I didn't find anything else about it. You know, it's not my problem. It's not something I'm doing. He found -- he sent a request to me through a website. That's it.

Q. And you didn't have any further discussions after that about trying to extract email addresses from the Facebook website?

A. I don't think so. I mean, it wouldn't surprise me if ConnectU kept hounding us. If you show me some other email -- but to my recollection, no, we didn't.

Q. You mentioned that in July of 2004 you learned that ConnectU was sending unsolicited emails to people. How did you learn of that?

A. I think there was a couple. Some of them bounced back. A person complained, and -- I think certain messages got bounced back to the server. You can see that and see what the original message was. I think that's what that is.

Q. Was there any server activity that was occurring that created a problem?

A. Oh, like slowing it down or something?

Q. Right.

A. Not to my knowledge, no.

Q. And you mentioned something earlier about at 6:00 o'clock you learned of something and then at 9:00 o'clock you learned of something else. Could you describe what you meant when you're referring to that?

A. If you hand that out, I could.

Q. Sure, I'm happy to. This is Exhibit 82.

(Exhibit 82 marked for identification.)

A. All right. So at -- this is on July 22nd, 2004, at 3:13 a.m., this message -- I think it got bounced back, either bounced back or forwarded. But either way, at 3:13 a.m. I got this message, with all these emails, this email bounce. And then at 6:00 a.m. I say, "In the past --

So we got this email to us at 3:13, and then three hours later, 6:25 a.m., I sent an email to Nick and Marc, to iMarc in place, Marc Pierrat. And I said, "In the past 12 hours ConnectU admins have sent thousands of invite emails." I'm presuming it's thousands. I didn't actually count all these, but to me it looked like thousands. "Every single one was sent using a bogus from address. I've restored the old page until this gets all straightened out."

What I was referring to, the old page, there's an invite form, which we talked about earlier, so if you have an account at ConnectU, you could invite your friends to join. And I think if you were -- if you were logged in as an admin -- I don't think there was any limit on how many people you could invite to join.

So I'm presuming that ConnectU, because they were admins, made these different accounts, so they'd log in as god@harvard.edu, and send out -- paste in a whole bunch of email addresses inviting people to join. It says Jen Starr wants you to join ConnectU. That's the subject. They must have been logged in as someone named Jen Starr at this point. And then an hour after that, at 7:30 a.m., is when we say, "You know, we should move them off" -- we moved the site to Rackspace -- Rackspace is another hosting company -- and let them do whatever they want. We don't want that happening, if they're sending out spam through us.

So within three hours of getting this bounced back, I disabled the page, and then Marc suggested an hour later of moving them off our server.

Q. And you used the term "bogus from address."

What do you mean by that?

A. I'm not 100 percent sure, but "god@Harvard.edu" seemed like a bogus from address to me.

Q. And what about J. Starr?

A. The chances of -- again, this is me presuming. But the chances that a jstarr@georgetown.edu, a jstarr@amherst.edu, and a jstarr@Dartmouth.edu all logged into the ConnectU website and invited 1,000 people -- I don't know, I just guessed that those were bogus, and by "bogus" I meant not real.

Q. And what you mean by that is that these email addresses were not accurately reflecting who was actually sending the email.

A. That's what I was guessing, yes.

Q. And do you know what these -- you used the phrase "invite emails."

A. Yes.

Q. What were the invite emails?

A. Well, the subject, it tells you whoever you're logged in as. So this one we're looking at here says, "Jennifer Starr wants you to join ConnectU." And then in the body of the text there's a marketing paragraph, "ConnectU is for college students. It lets you do this, this, this. Click here to create your account." It was like some predefined text that was used to invite people to sign up for their website.

Q. And at the beginning of this sentence you say, "ConnectU admins have sent thousands of invite emails."

A. Yes.

Q. How did you know it was ConnectU admins?

A. I think just because of the number of these addresses. I mean, I don't think a real Jennifer Starr at georgetown.edu is sending these. So I'm guessing, the same way that I'm guessing that god@harvard.edu and all the other emails are bogus. I'm guessing that one of the members at ConnectU logged in, created the accounts, and then sent the emails.

Q. Did you ever discuss the sending of these emails with someone from ConnectU?

A. I'm sure we did, because right here the thing I do is I took down the page so they couldn't do that. So I'm sure we had to bring that up, and we like told them that, "If you do this, our server could get email blacklisted. You know, you can't legitimately do this. People are going to complain"

and whatnot. It's unsolicited email. It's spam. You can't just do that.
Q. And do you recall them responding in any way?
A. No, unless there's an email dialogue.
Q. But you don't remember any discussions.
A. No. I think stuff like that was more important to us because we were running a business that had other clients and ethically we didn't think it was right. So I'm not sure what dialogue happened after that.
Q. Let's mark this as 83.
(Exhibit 83 marked for identification.)
A. Yep.
Q. Do you recognize what's been marked as Exhibit 83?
A. Yes.
Q. And what is Exhibit 83?
A. An email in response to that last one, a couple of hours later in the morning.
Q. And this is from Nick Grant to you?
A. To me and Marc.
Q. Marc Pierrat?
A. Marc Pierrat, yes.
Q. In this email the phrase is made, "Give

them an inch, and they take a mile."
A. Yes.
Q. And remember, you are being deposed on behalf of iMarc.
A. Yes.
Q. Do you have any understanding as to what that phrase meant?
A. Yes.
MR. SCHULTZ: Objection, calls for speculation.
A. I believe that, you know, the inch is creating this tool that allows you to invite people. There's the tool. It has a valid purpose that can be used for a valid reason. If you join ConnectU and you really like it, maybe you want to invite people and tell them about it. It's a pretty common feature. On news features you can send stuff to a friend or whatever. So that's the inch. And the mile is using that tool to send to all these people.
Q. And the following paragraph says, "Let's get them on the phone and let them know that this is unacceptable and if they want to continue this sort of thing they should look for another hosting provider." Do you see that?
A. Yes.

Q. And do you recall if that was actually done?

A. Oh, yes, because shortly after this they moved to another hosting provider.

Q. Do you have any idea how they got these email addresses?

A. No.

Q. Did they ever tell you how they got the email addresses?

A. No.

Q. Did they ever deny that they sent all these unsolicited email messages?

A. Did they ever deny? I don't remember.

Q. Did they ever tell you that they did send them?

A. I don't remember.

Q. Have you ever had somebody try and hack into iMarc's site?

A. Not to my knowledge. That doesn't mean anyone hasn't tried.

Q. What about websites that iMarc hosts?

A. There was a third-party forum that we installed on someone's computer that got hacked into. Not ConnectU, though.

MR. CHATTERJEE: Let's mark this as

Exhibit 84.

(Exhibit 84 marked for identification.)

THE VIDEOGRAPHER: I'd like to inform counsel that there are five more minutes on the tape.

A. Yep.

Q. Do you have any knowledge about what's been marked as Exhibit 84?

A. This is my first time seeing this.

Q. Were you aware that Marc Pierrat had discussed with Cameron Winklevoss the sending of unsolicited commercial email addresses?

A. What was the question, again?

MR. CHATTERJEE: Why don't you read it back.

(Question read.)

A. I think that we all -- I mean, especially after this first one, I think we all said that -- I mean, that it's not a good thing to do.

Q. Do you know if anyone from iMarc ever said to Cameron Winklevoss, Tyler Winklevoss, or Divya Narendra that doing so could be unlawful?

MR. SCHULTZ: Vague and overbroad.

A. I don't remember.

MR. CHATTERJEE: We need to change the

tape. Why don't we take a break and I will come back in a few minute. I don't think I'll have any more questions.

THE VIDEOGRAPHER: The time is 2:21, and we are off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 2:44, the beginning of Tape 3, and we are back on the record.

Q. If you can take a look back, Mr. Tufts, at Exhibit No. 82.

A. Yes.

Q. Now, in looking at Exhibit No. 82, in the forwarded email from Jennifer Starr --

A. Yes.

Q. -- all of the email addresses seem to start with either a number or the letter A. Do you see that?

A. Yes.

Q. Did you forward all of the emails that were being sent by Jennifer star?

A. Yes, you can actually see at the end it says "End of forwarded message." I'm guessing that there's a limit to the file size of the header that is going to display on this. I didn't cut off anything, though.

Q. Do you know if there were additional emails sent from these other email addresses that are identified in Exhibit 82?
A. I don't know if there were.
Q. Well, how did you know that there were emails being sent from each one of these?
A. I guess there must have been multiple bounces.
Q. And so this forwarded message is an exemplary one of all of the emails that were sent?
A. Right. So this is from me at 6:25 a.m., from me to Nick and Marc. I presume that I picked one and said, "In the past 12 hours ConnectU admins have sent thousands of invite emails," and it looks like there were four email addresses. So there must have been at least four bounce-backs with those addresses.
Q. And how did you find these exemplary email addresses?
A. I'm not too sure on that, because actually where it says "Forwarded from Jennifer Starr, 3:13 a.m.," it's to -- the "to" address is dave@imarc, marc@imarc, and then nick@imarc, and then sent to all these other people. So I'm not sure.
Q. So these wouldn't have traveled through the

ConnectU system?
A. They would have traveled from the ConnectU Web server out to the Internet.
Q. Because of the way you fill out the invite form?
A. Correct.
Q. And would the ConnectU website in the way it was designed have stored these invitation requests somewhere?
A. No, I think they were just -- they were emails.
Q. So when someone goes to the ConnectU website to invite somebody and they type in the email address that they want to send an invitation, is that recorded anywhere in the ConnectU system?
MS. SCHOENFELD: Objection, vague.
A. I don't remember. I think after this they implemented some plan that encouraged their users to send invites, where they offered gift certificates if you, you know, invited X amount of people. So I think that we would have tracked --
And so in this case we knew that Jennifer Starr was actually logged into the system and that that person sent out an email. But yeah, I don't think that we -- I think we might have --

Again, I think this was after this email, we added a new feature that actually counted like how many invites you sent out, that they wanted to do to encourage users to invite more people.

Q. Well, that would count the number of invites, but I'm talking about actually recording the specific email address that it was sent to.

A. No, I don't think so.

MR. CHATTERJEE: Let's mark this as Exhibit 85.

(Exhibit 85 marked for identification.)

A. Did we ever do 84?

Q. Yes, I think we already talked about that.

MS. SCHOENFELD: We didn't.

(Discussion off the record.)

Q. Turn to Exhibit 84.

A. Yes.

Q. Do you have any understanding what "blacklisting" means?

A. Yes.

Q. Go ahead.

A. "Blacklisting" means -- as I said, the invite email is authored on a Web page, and then you hit the Submit button, and it sends it out from the Web server to someone's email address. The destination email server knows where the message was originated from. You know, to combat spam, most incoming mail servers then have a list of known spam servers. It's called a blacklist. So if it sees mail coming from one of those Internet addresses, it will ignore it, delete it, bounce it back, do whatever it needs to do. That's what I would call "blacklisting."

Q. And did you have any discussions with Mr. Pierrat about the response from neu.edu?

A. No, I don't think so. I think this is the first time I've seen this.

Q. And you're not aware of any conversations between iMarc and Mr. Winklevoss related to responses by people about unsolicited commercial email?

A. I think later on someone contacted us, and we forwarded it to them. But I think in this case it's clearly someone contacted Cameron, and Cameron contacted Marc, saying, "Hey, should I be worried about this?" And Marc said, "Yes, you shouldn't be doing this."

Q. At this point in time Mr. Pierrat was an employee of iMarc; right?

A. Yes. I'm not 100 percent sure. It doesn't have his email address on here. But I think he still was, August 2004.

Q. If we go to Exhibit 85 --

Oh, I have one other question: You had mentioned that in response to the emails that were being sent out, that you were getting bounce-backs, I think you used the phrase.

A. Yes.

Q. What did you mean by that?

A. So on this one, I thought --

Q. Could you identify the number?

A. Sorry. On 83 or 82, where it's showing who it was sent to, it looks like it was like a bounce-back, but I'm not 100 percent sure.

Q. Say that again?

A. Typically -- like if the Web server sends an email to an unknown address, that -- the server that it sent it to could bounce it back to the Web server, and then the Web server could, you know, bounce it to one of the iMarc accounts, forward it back to the iMarc accounts.

And that's what I thought this looked like, these headers. But I don't know, the more I look at them, I don't really understand how these headers were put together. So I'm not sure if this actually was a bounce-back.

Q. So your belief is that these might have been unrecognized email addresses that were sent back to iMarc?

A. No, because if all of those bounced back, we would have been inundated, and it would have probably taken our mail server down. So I'm not sure. I'm not sure how these email headers are put together.

Q. And were you inundated with bounce-backs?

A. No, I don't think so.

Q. And what's the problem associated with bounce-backs? When you say you were inundated, you would have taken the server down. Why would you do that?

A. Because the server the website is hosted on is a pretty high-performance server, and it's really easy to send out a thousand emails, or however many are here. And at this time iMarc's internal email server was pretty antiquated, pretty slow. So obviously if you have a high-performance thing pushing stuff out and then they're bouncing back at that same rate, it's going to take our mail server down.

From the tone of my email, obviously

these weren't all bounce-backs, or else I would have been a lot more angry. I mean, we're angry they're sending out spam, but nowhere in here do we mention that it's ruining our email server.

Q. Let's go to Exhibit 85. Do you recognize Exhibit 85?

A. Yes.

Q. And what is it?

A. A -- it starts off, "Someone with a brown.edu address sent an email to iMarc through our website contact form." I can tell that because of the subject regarding in brackets iMarc@www.mci.com. That means this person went to imarc.net, clicked on Contact Us, and sent the email. And he says that he was spammed by one of our customers and would like to take action. I'm guessing -- I don't know how he -- I'm guessing that he found us through maybe our portfolio page, where we announce that we did this connectu.com website. But he obviously didn't look it up -- he went to our website and contacted us that way. So he knew that one of our customers was spamming him, and he wants to know what he should do. Says he's extremely serious.

And we reply, and he thanks us for our prompt replies. And then he tells us he received a broadcast email "from one of your clients, connectu.com. While I'm usually satisfied with being removed from a spammer's email list, the magnitude of this problem requires me to take further action. I will be gathering and compiling these emails from multiple people in the next few days and will send it all your way. At that point, thank you for your cooperation."

I think this is exactly why we didn't want them on our servers, because we don't want to deal with crap like this. So even at this point, September 14th, they weren't on our servers, we weren't managing their website. But if you looked up connectu.com or ConnectU on the Internet, you'd see iMarc made a new press release or whatever, in our portfolio, that we made the website. So obviously this guy still found us. And we're trying to help him out, because I hate spam as much as the next guy. I think we forwarded all this information in a following email to, I think, webmaster@connectu.com.

Q. Do you know if they took any action with respect to it?

A. Don't know.

Q. Did you ever hear from Mr. Gomel,

G-o-m-e-l, again?
A. I don't know. I think there was one more email of us forwarding everything that he had sent us to ConnectU. So I'm not sure what other information, but it's in the stack of emails.
Q. I'm going to thank you very much for your time. I know that depositions aren't the thing that most businessmen want to spend a lot of their time doing. But thank you very much. I don't think I have any further questions at this time. I may follow up following the other attorneys' questions. I'm going to pass the witness to Mr. Hampton.

EXAMINATION

BY MR. HAMPTON:
Q. Hi, Mr. Tufts. I'm Dan Hampton, and I just have brief follow-up questions in one area. If I recall correctly, Mr. Chatterjee earlier asked you some questions about the process of transferring the ConnectU information from the iMarc server to the new server. And if I recall your testimony correctly, you said that when everything goes well, no data is lost.
A. Correct.
Q. Do you recall that testimony?
A. Yes.

Q. Did everything go well in the case of the transfer of the ConnectU information?

A. I think so.

Q. So to your knowledge, was any data lost in the transfer of the ConnectU information from the iMarc servers to the servers that John Taves was --

MS. SCHOENFELD: Objection, calls for speculation.

A. I don't think that any important information vital to running the website was lost. You know, obviously, if the home page didn't get transferred, we would hear about that immediately. If one of the lesser important pages -- you know, there was a problem with that, maybe we'd hear about that a day or two later. As pages are less important, maybe further down the road, we'd hear that something was lost. But we didn't hear that, "We didn't get this, this thing isn't working any more." So as far as I know, all the functionality of the website that people actually used was transferred over.

Q. Did you ever hear from anyone associated with the ConnectU website that any data had not transferred properly?

A. No.

Q. Thank you. That's all I have.

EXAMINATION

BY MR. CHOW:

Q. I just wanted to clarify one of the exhibits, which is the contract, Exhibit 71. If you can look at that.

A. Yes.

Q. Mr. Tufts, is this document, Exhibit 71, a form contract that is used by iMarc?

A. Right about this time we were trying to be a little more professional, and when we were kicking off a project, starting with something like this. Obviously, by this day we weren't kicking off ConnectU.

Q. "This date" being?

A. Sorry, July 12th, 2005. So we kind of just used this as -- before we handed over all the source code.

Q. Did you have a prior form agreement that you used?

A. No. We had a proposal doc that basically put a budget and time line on a project, that iMarc signs off on and the client signs off on, mostly for budget and time line.

Q. Were you involved in any of the drafting of all the source code in our possession associated with the website connectu.com as it appeared on May 26, 2004, to a CD-ROM, the CD-ROM containing the source code, and we'll mail it to the client.

Q. So was this the creation of a website?

A. No. This was just turning over all of the code to them, which they actually had access to on their own server.

Q. What work was actually done on this contract?

A. On this contract? We went to our backups, unarchived, everything having to do with ConnectU, saved it into a CD-ROM, and FedExed it to the client.

Q. And what was charged for that?

A. $1,000.

Q. And what was this in response to?

A. It was in response to a number of emails from them going back and forth, asking for copies of the source code.

MR. CHOW: No further questions.

MS. SCHOENFELD: No further questions.

RE-EXAMINATION

BY MR. CHATTERJEE:

Q. I want to ask you three subject matters;

hopefully it won't be too many questions, as to that contract that Mr. Chow just asked you about.

A. Yes.

Q. Did you understand that contract to be confirming the ownership of the source code to the ConnectU website?

MR. SCHULTZ: Objection, vague.

A. What do you mean, "confirming the ownership"?

Q. Was it saying that iMarc owned the ConnectU source code?

A. Yes.

Q. Mr. Hampton asked you a few questions about what was transferred to the other server.

A. Yes.

Q. Two things about that. The first thing, he asked you if it was transferred to a hosting service provided by John Taves. Do you know what hosting service it was actually transferred to?

A. Yes. It was an account you can tell -- I think Exhibit 84, where the person actually makes the complaint to abuse@cihost.com and noc@cihost.com. I'm not sure -- I don't think that that website was actually -- or that server was paid for or purchased -- set up by John Taves. I believe that we told ConnectU, "We don't want to host your website any more. Here is a place where you can get Web hosting. You guys set up the account and give us the information, and we'll help you move it over, and then you can continue developing. We'll help you get it going." But I believe it was ConnectU, not John Taves, who actually, you know, purchased the account at cihost.com.

Q. And that was -- that cihost.com is where you transferred the ConnectU website server to?

A. Correct.

Q. And one thing -- now going to my second point. Mr. Hampton asked you a question about what was transferred, and you said that all the functionality was transferred to this new Web server. Do you recall that?

A. Yes.

Q. What about all of the data? And I'm going to give you some very precise questions. I've seen documents in the production where the Web host, or the ConnectU administrator, could follow instant-message chats occurring on the ConnectU website.

A. Uh-huh.

Q. Would those instant-message chat files, that maybe aren't viewable any more, also be transferred?

MR. SCHULTZ: Objection, vague and overbroad.

A. The ones that still existed should. There actually was something written into the code something to clean those up so it doesn't fill up the server. I mean, you can tell, like we open up a chat connection, we chat for a while, and then we close, and once it's inactive for a couple of hours, the system assumes that we're no longer chatting any more. So there was garbage cleanup, scripts written into the application to clean up these files, so they don't overtake everything.

So there's chat -- if you're asking specifically about chat IM transcripts, the recent ones should have been transferred over, but on purpose old ones were cleaned up, for obvious reasons.

Q. And what about things like emails and other sorts of data that might occur on the website but were kind of similar degrees of transience?

A. Actual -- again, if I find your -- search for your profile on the website and click Email to You, I send you an email, an alert goes to your

CERTIFICATE OF COURT REPORTER

I, Alan H. Brock, Registered Professional Reporter and Certified Realtime Reporter, do certify that the deposition of David Tufts, in the matter of Face Book, Inc., and Mark Zuckerberg v. ConnectU, Inc., et al., on October 5, 2007, was stenographically recorded by me; that the witness provided satisfactory evidence of identification, as prescribed by Executive Order 455 (03-13) issued by the Governor of the Commonwealth of Massachusetts, before being sworn by me, a Notary Public in and for the Commonwealth of Massachusetts; that the transcript produced by me is a true and accurate record of the proceedings to the best of my ability; that I am neither counsel for, related to, nor employed by any of the parties to the above action; and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Alan H. Brock ____________________ October 9, 2007

Alan H. Brock, RDR, CRR